



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Department of Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-560
Regulation Title:	Rules and Regulations Pertaining to Labeling and Sale of Infant Formula
Action Title:	Retain
Date:	May 8, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by a agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

Infant formula (a substitute for milk) is a food for infants. This regulation requires that an expiration date, in the form of a month and year, be affixed to each container of infant formula that is offered for sale or sold in Virginia. The regulation prohibits the sale of infant formula after that date, thus ensuring that, at the time of purchase, the infant formula is capable of providing infants with appropriate nutrition.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or

discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The legal authority for this regulation is contained in § 3.1-398 of the Code of Virginia (1950), as amended. The Code of Virginia vests the authority to promulgate regulations for the efficient enforcement of the Food Laws in the Board of Agriculture and Consumer Services, unless specifically conferred to the Commissioner.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The Department published its notice in The Virginia Register of Regulations on February 12, 2001 advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). The Department did not receive any public comments concerning this regulation. An informal advisory group was not formed for the purpose of assisting with this periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The specific and measurable goals of this regulation are:

- (1) Protection of the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
- (2) Ensuring that infant formula offered for sale in Virginia is accurately represented to the consumer and is fresh and capable of providing infants with appropriate nutrition for their proper growth and development.

The regulation has strengthened the provisions of the Virginia Food Laws that ensure a safe, wholesome, unadulterated and properly labeled food supply by requiring that containers of infant formula offered for sale in Virginia be affixed with an expiration date and not be offered for sale

after that date. This regulation has been effective in achieving these specific and measurable goals.

This regulation is clearly written and easily understood by the individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

An alternative to this regulation would be to allow infant formula to be sold after the expiration date shown on the container. However, the agency has rejected this alternative because infant formula is the sole source of nutrition for many infants and must be safe, wholesome and of high quality in order for an infant to receive proper nutrition from its consumption.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

The agency recommends the retention of this regulation without change.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

Unless otherwise discussed in this report, this regulation has no impact upon families.